IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 13513 of 2004(H)

I.A.1141/04 IN OS.648/1995 of PRL.M.C.KOZHIKODE-I

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PETITIONER:

DR.N.VIJAYAN,
RESIDING AT "PRASANNA",
KOTTOOLI AMSOM AND PARAYANCHERI DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.K.V.SOHAN
SRI.R.SUDHISH

RESPONDENTS:

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1. THE GOVERNMENT OF KERALA,
REP.BY CHIEF SECRETARY,
GOVERNMENT OF KERALA SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
KOZHIKODE.

3. THE TAHSILDAR,
KOZHIKODE.

ADDL. 4. PARAYANCHERI POURASAMITHI S.269/04, PUTHIYARA PO,
KOZHIKODE, REP. BY ITS SECRETARY K.T.RAVINDRAN.

" 5 JAYAKRISHNAN, GAYATHRI, PO PUTHIYARA,
MAVOOR ROAD, KOZHIKODE-673004

ADDL. RESPONDENTS 4 AND 5 IMPLEADED AS PER ORDER DATED 29.6.2007 IN I.A.NO.10032/04.

R1 TO R3 BY GOVERNMENT PLEADER SRI.THOMAS JOHN AMBOOKAN
ADDL.R4 & R5 BY ADV.SRI.VINOD RAVINDRANATH
SRI.T.R.RAVI,
SRI.P.S.MURALI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.13513/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF ORDER IN CRP.916/98 DT.22.9.99 OF THIS COURT.

EXT.P2 – TRUE COPY OF I.A.1141/O4 IN O.S.648/95 AND AFFIDAVIT FILED BY RESPONDENTS FOR REOPENING THE CASE DT.15.3.04.

EXT.P3 – TRUE COPY OF ORDER BY PRL.MUNSIFF, KOZHIKODE IN EXT.P2 I.A., DT. 19.3.04

RESPONDENTS' EXTS:

EXT.R4(A) – TRUE COPY OF NEWS REPORT WHICH APPEARED IN MALAYALA MANORAMA DAILY DT.29.6.04.

EXT.R4(B) – TRUE COPY OF REPLY DT.7.7.04 SENT BY EXECUTIVE ENGINEER, ROADS DIVISION, KOZHIKODE TO PETR.

EXT.R4(C) – TRUE COPY OF AFFIDAVIT IN SUPPORT OF I.A.2480/04 IN O.S.648/95 FILED BY 1ST PETR. HEREIN DT.9.7.04.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.13513 OF 2004

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DATED THIS THE 29TH JUNE, 2007

J U D G M E N T

Heard Mr.K.V.Sohan, counsel for the petitioner and Mr.Thomas John Ambooken, Government Pleader. I have also heard Sri.T.R.Ravi, counsel for the party-respondents.

2. Ext.P3 order of the learned Munsiff allowing a highly belated application submitted by the Government for adducal of further expert evidence regarding the identity of the property is under challenge. Mr.Sohan submitted that pursuant to Ext.P1 order of this Court in C.R.P.No.916 of 1998, the petitioner was able to adduce all evidence and was able to substantiate before the court below that the commissioner's report in question is not acceptable. The evidence was closed and the suit was posted for final hearing and it was at that juncture that the Government came forward with the present application and the learned Munsiff has allowed it totally unmindful of Ext.P1 order and the stand taken by the Government in Ext.P1 case and the volume of evidence which has been let in by the petitioner, counsel submitted.

3. I will certainly agree with Mr.Sohan when he submits that the petitioner has been put to considerable inconvenience on account of

the belated filing of the present application. At the same time, from Ext.P3 what I could discern is that the learned Munsiff is of the opinion that he will be able to take a decision on the merits of the contentions only if the "clarified opinion of the expert based on a survey report after adopting the best method available" is also received. When the trial court is of that opinion, I do not think that this Court will be justified in interfering with Ext.P3. It would have been ideal if the learned Munsiff had imposed some conditions. But at this distance of time, when I am told that the plaintiff himself filed an application during the pendency of the Writ Petition as I.A.No.1652 of 2004, I refrain from awarding costs. It is made clear that in the event of the court becoming inclined to direct a further measurement of the properties on the basis of the expert evidence which the Government may bring on record, the petitioner will have the liberty of filing work memos before the person who conducts measurement.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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